

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Art Unit: 3744
Applicants: John E. Davis, et al.
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Atty. Doc.: TRIL-05

Cincinnati, Ohio
45202

June 24, 2010

MAIL STOP
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF JOHN E. DAVIS

John E. Davis, being first duly cautioned and sworn, states as follows:

1. My name is John E. Davis. I am one of the inventors in U.S. Patent No. 6,603,052. The other inventor is Mr. Timothy P. Klonne, who was a partner with me in an Ohio Corporation called TollamCo, Corp. That corporation did business at 7195 East Kemper Road and 7131 East Kemper Road in Cincinnati, Ohio 45209.

2. Due to some restructuring and management resignations at a company called Newport Converting in July, 2009, I began working and helping part-time at the Newport Converting office. Newport Converting is owned by my daughter. On September 22, 2009, while digging through some files, I uncovered the original Patent Certificate for U.S. Patent No. 6,603,052 and

associated documents, including the cover letter sent with the Patent. That is the first time that I had seen the original Patent document and an accompanying letter and the first time that I knew that I had the Patent in my possession. I had not had a chance to read the original '052 Patent document, determine its status or manage any dates or maintenance fees associated therewith, even though at that time in September 2009 I had a general understanding that there was a patent associated with the subject matter set forth in the '052 Patent.

3. On September 22, 2009, I called Mr. Kurt A. Summe at Wood, Herron and Evans, LLP., and we discussed the maintenance fee issue. I did not recall paying any maintenance fee. Upon determining that the maintenance fee had not been paid, I indicated that I would like to try to pay the maintenance fee late and keep the Patent alive. We discussed what steps might be taken to send in the delayed payment of the maintenance fee.

4. On September 25, 2009, Mr. Summe and I again spoke and discussed that, because of the time that had elapsed, my Petition had to be accompanied by a significant showing that the delayed payment was unavoidable, and would require very specific facts regarding the Patent, the steps taken regarding handling that Patent once it was received, and any steps taken with respect to calendaring and paying the maintenance fees. We discussed that the burden regarding the unavoidable situation was a high burden, and that we would have to construct the facts surrounding the Patent,

maintenance, and late payment of the maintenance fee. Furthermore, Mr. Summe and I discussed the ownership of the Patent, and the involvement of the other inventor, Mr. Timothy P. Klonne.

5. I had a stroke in 2003 around the time of the Patent issuance. I am still suffering from the effects of the 2003 stroke, and thus, it was necessary for me to go back and spend time to reconstruct facts surrounding the maintenance fee issue. I had no immediate knowledge at the time regarding any steps taken regarding the '052 Patent or ownership, because I had just discovered the patent. In September, 2009, I began in the arduous process of trying to reconstruct the facts surrounding the '052 Patent and the maintenance fee issue, and to also determine the ownership status of the Patent as it applied to the other inventor, Mr. Klonne. I have diligently continued that task from September 2009 to this day, which has been difficult given my current mental and physical condition, as well as the time that has elapsed, and the locations and conditions of the various files that I needed to review. I have engaged the help of my wife and my daughter to assist me where possible. I have also tried to make appointments with various of the doctors involved, and to have them access their medical records so that I might determine the time frames of various health events, and how that has interplayed with my mental state and the timeline in the delayed payment of the maintenance fees. I have continued such efforts, working with Mr. Summe, and, although the process has been slow and tedious given the medical hurdles, I have gathered the necessary information to establish

the truly unavoidable nature of the delayed payment of the maintenance fees. In a call with Mr. Summe on May 6, 2010, I concluded that I had exhausted that process and we would proceed and finalize and file the petition with the facts that we have as is.

6. Initially, it was apparently our desire to assign the Patent to the corporate entity. However, from a review of the TollamCo, Corp. files and my notes, I could not determine that Mr. Klonne and I ever followed through on that formal Assignment, and thus the Patent Application and issued Patent were initially owned by the two of us as individual inventors. This was later confirmed when I found notes indicating that Mr. Klonne had assigned his rights in the Patent to me when he did not want to pay his portion of the Patent issuance fees.

7. On or around May 1, 2003, the doors to TollamCo, Corp. at the East Kemper Road, Cincinnati, Ohio address were closed due to business conditions. From approximately May, 2003 to November, 2003, liquidation proceedings progressed for TollamCo, Corp.

8. On May 7, 2003, shortly before payment of the Issue Fee in the '052 Patent was apparently due, I suffered a significant stroke. Pursuant to that stroke, I have suffered significant short-term memory loss, and at the time, was incapacitated in my day-to-day functions. As a result, I was also not able to work any longer at the business that had been associated with TollamCo, Corp., and

subsequent business endeavors. I had significant short-term memory loss, a degraded ability in any facial recognition, and a significantly-slowed thought process. At the time, I therefore quit working day-to-day, and was confined to my Son's home at 804 Maple Avenue, Newport, Kentucky 41071.

9. I remained incapacitated from the May 7, 2003 stroke, until approximately October, 2003, when I began to try to recapture some normalcy in my life. I do not have any specific memory of that time frame involving the closing of TollamCo, Corp., and the issuance of the '052 Patent. In order to try to piece together the events and facts surrounding the '052 Patent, its ownership, the issuance, and the delayed payment of the maintenance fees, I have had to try to gather all possible archived corporate and personal records from that time frame. This has been a significant task due to my mental and physical incapacitation. Furthermore, since I do not have any direct mental recollection of the time frame regarding the issuance of the '052 Patent, or any issues of maintenance fees, I have had to try to recreate, from written documents and any recollections, the facts surrounding this issue.

10. This task has been more difficult and slow due to the fact that I am suffering from heart disease. Prior to the time of the stroke, in July, 2002, I was diagnosed with heart disease. The heart disease has become progressively worse. In early 2007, I began to have life-threatening rapid and irregular heartbeats, and specifically on May 3, 2007, I began having a rapid and irregular

heartbeat that could not be controlled. I have since had three heart surgeries to address my heart issues. On January 7, 2007, I had the first heart surgery, which was an unsuccessful catheter ablation to control the rapid heartbeat. On December 7, 2007, I had another heart surgery to control the rapid heartbeat. That surgery was partially successful, and the rapid heartbeat could then be controlled with heavy medication. On October 20, 2008, I had another heart surgery to implant an internal cardiac defibrillator and pacing device. I have been stabilized with heavy medications and a significantly-restricted physical activity level. As such, I have had a difficult and time-consuming process in finding, reading, and reviewing various documents to try to put together in memory and facts regarding the timeline surrounding the '052 Patent and the issue of a delayed payment of the maintenance fees.

11. I have gone back carefully through the records that are over five years old, including corporate records and personal records that have been scattered around at various locations. I am in possession of the defunct TollamCo, Corp. records, as apparently I had agreed with Mr. Klonne, my business partner and the other inventor in the '052 Patent, that I would keep the TollamCo, Corp. records. Those records are scattered around in various locations due to the fact that the original company, TollamCo, Corp., was closed, and the remaining portion and files of that company has been moved to various different locations.

12. I have gone back and tried to put together a day-by-day or week-by-week account of what occurred around the time of the Patent issuance. Since suffering the stroke, I have fluctuated over the years to being able to remember for less than one minute, to be able to retain memory for up to at least a waking day. To this day, I still do not hold many thoughts overnight, and thus, often must refresh my memory each day to some degree. While I have gotten somewhat better over time, I have still very highly-dependent on written notes, my calendar, and other outside people, such as my wife and daughter, and/or various services to maintain any organization or order in my daily life.

13. Because of my restricted physical activity level, it has been a slow and arduous process in retrieving and accessing the various documents to put together the facts for this Petition. My daughter and wife have assisted in that regard. However, I still must review the documents, determine which ones are relevant, and also study those documents to refresh my memory and try to have some understanding of the time frames at issue. Furthermore, I have had to meet with various of my doctors, including my cardiologist, neurologist, and general physician, in order to review their records and medical notations and discern the time frames associated with my medical problems and try and determine if it had any bearing on the issue of the maintenance fee or the Patent and my general condition around the time of the Patent issuance. Recently, I

was able to meet with my physician, and review the time frames associated with the original stroke that occurred around the time of the Patent issuance and my condition at that time.

14. During the process of closing TollamCo, Corp., the corporate records were moved to the Blue Horizon Inc office at 1024 Saratoga Street, Newport, KY 41071 from the East Kemper Road, Cincinnati, Ohio address. Some time around the time frame of August 8, 2003, the original Patent was received at 223 Congress Street, New Richmond, Ohio 45157, which is the address of my daughter who was assisting me with my financial affairs at that time. At that time, that was also the address of the corporate office for Blue Horizon, Inc., which was the corporate entity carrying on a portion of the original TollamCo, Corp. business, and was a company managed by my daughter. At that time, I was still incapacitated from day-to-day business activities because of the stroke and was having difficulty with my memory. I was not actively working. Someone at the Blue Horizon, Inc. address of 223 Congress Street, New Richmond, Ohio 45157 received the Patent, and apparently, it was placed into files at the Newport KY office. My daughter presented the return postcard to me along with other documents for signature and also apparently sent back the postcard indicating that the Patent was received. I was not cognizant of the original Patent at that time due to the stroke, nor do I remember seeing or reading the original '052 Patent. I cannot recall having filed any Patent document

away. I do not have a recollection of handling the original Patent, and do not know who did or placed it into the archived TollamCo, Corp. files. It remained there until I discovered it.

15. As a result, I would not have had a suitable opportunity to note the issue of maintenance fees being due or to docket such dates in my files or my calendar at the time the Patent was issued. In fact, because of the stroke, I was struggling with just functioning and remembering in a day-to-day fashion in the August, 2003 time frame.

16. Also, because TollamCo, Corp. was out of business around the time the '052 Patent issued, no one affiliated with the corporation would have been responsible for attending to the Patent or to the maintenance fees and dates. There was no internal system or management maintained for TollamCo, Corp. There was no corporate docketing system. I therefore, did not have a chance, either individually or in a corporate capacity, to attend to the '052 Patent and its maintenance or have someone do so.

17. From my review of those files, it appears that the TollamCo, Corp. archive files were then later moved to the warehouse of another corporate entity owned by my daughter, named Newport Converting at 1024 Saratoga Street, Newport, KY 41071. My TollamCo, Corp. files and personal files remained in the Newport Converting facility, as I was not working at that time. The original Patent

and supporting cover letter and documentation remained in the files at Newport Converting from that time on until I randomly came across the files and the Patent document when later working at Newport Converting in 2009 and going through some old files.

18. Since the bankruptcy, Mr. Klonne has had nothing to do with the old business or business remnants of the defunct TollamCo, Corp. My recent efforts to contact Mr. Klonne and get any information from Mr. Klonne have failed. I have continued to review the corporate documents and files to determine any role of Mr. Klonne with respect to the '052 Patent.

19. In my review of the TollamCo, Corp. documents and personal papers prior to the issuance of the '052 Patent and forward to approximately the August, 2003 time frame, I was not able to locate any formal corporate Assignment document that was signed wherein myself and Mr. Klonne assigned our Patent rights to TollamCo, Corp.

20. Through the review of files, however, I did find a note that apparently I had placed in my personal files regarding a telephone conversation with Mr. Klonne on or around August 14, 2003. I do not remember the phone call. The note is dated August 14, 2003. From that note, attached as Exhibit A, I was able to determine that I was apparently going to pay the issuance fee or had apparently paid the original issuance fee myself with my own funds with the

thought of having Mr. Klonne repay one-half, as Mr. Klonne was a partner with me in the defunct TollamCo, Corp. and would also own the Patent with me. I must have spoken with Mr. Klonne with some information regarding paying the fee or finalizing the business of TollamCo, Corp. I cannot recall any details around this specific communication with Mr. Klonne in that time frame to my knowledge. I recall I was generally making some efforts in that time frame with Mr. Klonne to close the business to the best that I could and tracking down money.

21. From my note, Mr. Klonne apparently indicated to me that he was not interested in the '052 Patent, and would not participate in paying the Issue Fee so that a Patent could issue. At that time, Mr. Klonne verbally assigned any rights or interest he had in the '052 Patent to me if I wanted to pursue the issue. I apparently was not aware that any Patent had issued at that time as I had not seen the original '052 Patent and did not reference a Patent in the note, but I must have been prompted by my daughter about paying issue fees or having upcoming fees to pay at that time.

22. Therefore, because of this Assignment, Mr. Klonne would have no ownership in the Patent, from what I can determine. I am the sole owner of the '052 Patent. I have not discussed or corresponded with Mr. Klonne regarding maintaining the '052 Patent or any other actions taken with respect to the Patent.

23. I was not aware of the original '052 Patent document and the concept of maintaining that Patent until I discovered the original '052 Patent and the letter from Mr. Summe that was with it. I did not have the reasonable opportunity to even set up any calendar or system to remind me to pay the maintenance fees or to have others such as my wife or daughter help me in that regard. Therefore, there was no such calendar or system for the '052 Patent.

24. Until approximately the date of May 30, 2006, I received mail sent to TollamCo, Corp. at the East Kemper Road Cincinnati address in order to wrap up the business of TollamCo, Corp. but then received no mail thereafter for that address.

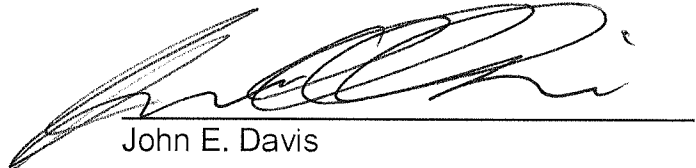
25. I did not receive any letters from Mr. Summe or Wood Herron & Evans regarding dates or deadlines to pay the maintenance fees. Therefore, I could not reasonably take any steps to pay the maintenance fee through Wood, Herron & Evans. Since I do not have any other Patents, I was not in contact with Wood Herron & Evans until the time of discovering the original Patent certificate on September 22, 2009. I have not received any other reminder letters from any other entity or firm regarding the maintenance of the '052 Patent.

26. I own this single Patent. This was the first maintenance fee that I would have to pay. I had never owned a Patent before or paid maintenance fees before on the '052 Patent or any Patent. I have not pursued other Patents and thus have no ongoing business relationship with Wood Herron & Evans or other Patent firms in that regard. As a consequence, I did not have any reasonable chance of paying the maintenance fee, and the delayed payment could not be reasonably avoided.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.

June 25, 2010
Date


John E. Davis

Patent notes

8/14/03

Called Tim Klonne today re patent issuing.

He expressed no interest in pursuing the patent and did not want to participate in paying the issuance fees.

He verbally assigned his interest in the patent to me should I want to pursue it.

JD

EXHIBIT A